



# Split Estate

**Rights, Responsibilities, and Opportunities**

[www.blm.gov/bmp](http://www.blm.gov/bmp)





## Planning and Lease Sales

The BLM manages 700 million acres of subsurface mineral estate nationwide, including approximately 58 million acres where the surface is privately owned. In many cases, the surface rights and mineral rights were severed under the terms of the Nation's homesteading laws. These and other Federal laws, regulations, and BLM policy directives give managers the authority and direction for administering the development of Federal oil and natural gas resources beneath privately owned surface:

- Coal Lands Acts of 1909 and 1910
- Agricultural Entry Act of 1914
- Stock Raising Homestead Act of 1916
- Mineral Leasing Act of 1920 and amendments
- Federal Land Policy and Management Act of 1976
- Onshore Oil and Gas Orders Nos. 1 and 7
- Oil and Gas Gold Book
- BLM Instruction Memorandums

Under these laws, regulations, and procedures, the leasing and development of Federal oil and natural gas resources occur in four phases:

- Planning and Lease Sales
- Permitting and Development
- Operations and Production
- Plugging and Surface Reclamation

In each phase, the BLM, the lessee/operator, and the private surface owner have rights, responsibilities, and opportunities.

Parcels of land or mineral estate **open** for leasing under the terms of a BLM land use plan may be nominated for leasing by members of the public. The BLM reviews every nomination to ensure that leasing the parcel would conform with the terms of the land use plan, which has been developed previously with broad public input.

The initial term for a Federal oil and gas lease is 10 years, but production can extend the lease period. Successfully bidding on and acquiring the oil and gas lease gives the lessee or designated operator the right to enter and occupy as much of the surface as is reasonably required to explore, drill, and remove the oil and natural gas resource on the leasehold. However, this right is not absolute. The BLM works to encourage coordination and cooperation among all parties that have rights and responsibilities in split estate situations.

## Permitting and Development

### 3814 Bond

## The Bureau of Land Management:

**Must** notify the public when preparing land use plans and amendments and when lease sales are pending.

**Strongly encourages** the operator to contact the private surface owner as early as possible in the process and **requires** the operator to make a good faith effort to negotiate surface use and access agreements.

**Will** invite the surface owner to participate in the pre-drilling onsite inspection.

**Seeks** the private surface owner's recommendations on development issues during review of the Application for Permit to Drill.

**Offers** the private surface owner the same level of protection provided on federally owned surface.

**Carefully considers** the private surface owner's views and the effects on the private surface owner's uses before determining mitigation measures.

**Does not participate** in negotiations between the operator and the private surface owner on the terms of surface use agreements and damage compensation.

**Must** bond the operator for operations and reclamation in accordance with Chapter 43, Section 3104 of the Code of Federal Regulations (3104 Bond).

**Bonds** the operator separately (3814 Bond) for an amount sufficient to protect the private surface owner against reasonable and foreseeable damage to or loss of *crops and tangible improvements*, if a good-faith effort does not produce an agreement with the surface owner.

**Advises** the private surface owner of the right to appeal the sufficiency of a 3814 Bond and **reviews** the sufficiency if the private surface owner appeals the bond amount.

**Must** fulfill the requirements of the National Environmental Protection Act, the National Historic Preservation Act, the Endangered Species Act, the Clean Water Act, and other applicable laws that protect surface resources.

**Takes** enforcement action to address operations not complying with lease and permit terms.

**Must** seek the private surface owner's written concurrence that reclamation is satisfactory.

## Operations and Production

## Plugging and Surface Reclamation

## The Lessee/Operator:

**May** participate in and comment on preparation of land use plans and amendments.

**May** nominate parcels for leasing.

**Should** coordinate and consult with the BLM and the private surface owner as early as possible.

**Must** participate in the onsite inspection the BLM schedules for the Notice of Staking or the Application for Permit to Drill.

**Must** identify the private surface owner and include the owner's name, address, and phone number in the Notice of Staking, Application for Permit to Drill, and Sundry Notices.

**Must** make a good faith effort to obtain an access agreement with the private surface owner.

**Must** certify to the BLM that he or she made a good faith effort to notify the surface owner before entry, and an agreement with the surface owner has been reached or that a good faith effort to reach an agreement failed.

**Must** submit an adequate 3104 Bond for operations and reclamation.

**Must** submit a separate 3814 Bond if efforts to obtain a surface use agreement fail.

**Is responsible** for making access arrangements with the private surface owner prior to entry upon the lands for the purpose of surveying, staking, or to conduct cultural or biological surveys.

**Must** comply with the terms of the lease, the Application for Permit to Drill, and the Conditions of Approval.

**Must** include a surface reclamation plan in the Surface Use Plan of Operations.

**Must** complete reclamation to the satisfaction of the BLM and the private surface owner.

## The Private Surface Owner:

**Is strongly encouraged** to participate in and comment on the preparation of land use plans and amendments.

**Has the right**, as a member of the public, to comment on pending lease sales and proposed lease stipulations, including the right to protest the inclusion of a specific parcel in a lease sale.

**Will** be invited to participate in the BLM's onsite inspections during the Notice of Staking and Application for Permit to Drill process.

**Can** expect to be contacted by the lessee/operator prior to entry and staking to discuss the terms of the surface use agreement or waiver.

**Is entitled** to the same level of surface protection that is provided on Federal surface.

**Will** be asked to sign the statement certifying the effort to conclude a surface use agreement.

**Can** respond to the BLM's request for recommendations on addressing surface construction and reclamation issues.

**Will** have his or her views on protection standards and limits carefully considered as the BLM determines the surface use conditions of approval.

**Has the right** to appeal the sufficiency of the 3814 Bond to the BLM and will be advised of this right by the BLM if a 3814 Bond is necessary.

**Is entitled** to seek compensation from the operator for damages to *crops or tangible improvements*, and if not satisfied, can file a claim in court for payment under the 3814 Bond.

**Will** have bond-sufficiency appeals reviewed by the BLM in a timely manner.

**Is encouraged** to report non-compliance incidents to the BLM.

**Can** expect to have appropriate inspection and enforcement action taken.

**May** concur that final reclamation is satisfactory or recommend additional actions.



# *The* **Bureau** *of* **Land Management**

## *Our Vision*

To enhance the quality of life for all citizens through the balanced stewardship of America's public lands and resources.

## *Our Mission*

To sustain the health, diversity, and productivity of the public lands for the use and enjoyment of present and future generations.

## *Our Values*

To serve with honesty, integrity, accountability, respect, courage, and commitment to make a difference.

## *Our Priorities*

To improve the health and productivity of the land to support the BLM multiple-use mission.

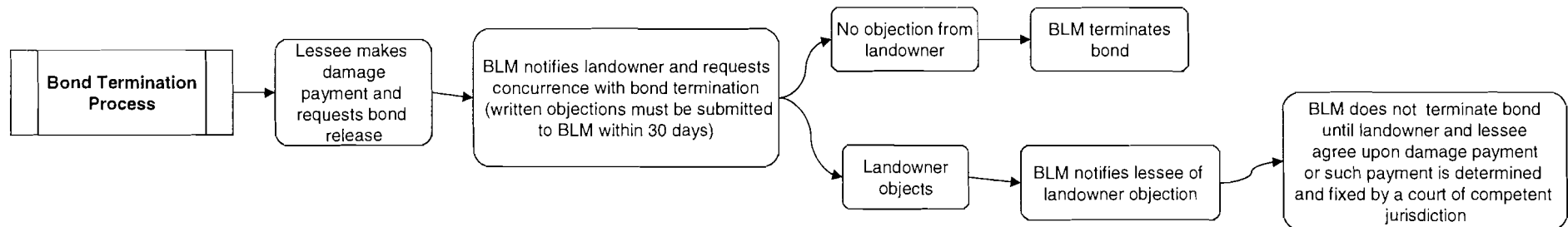
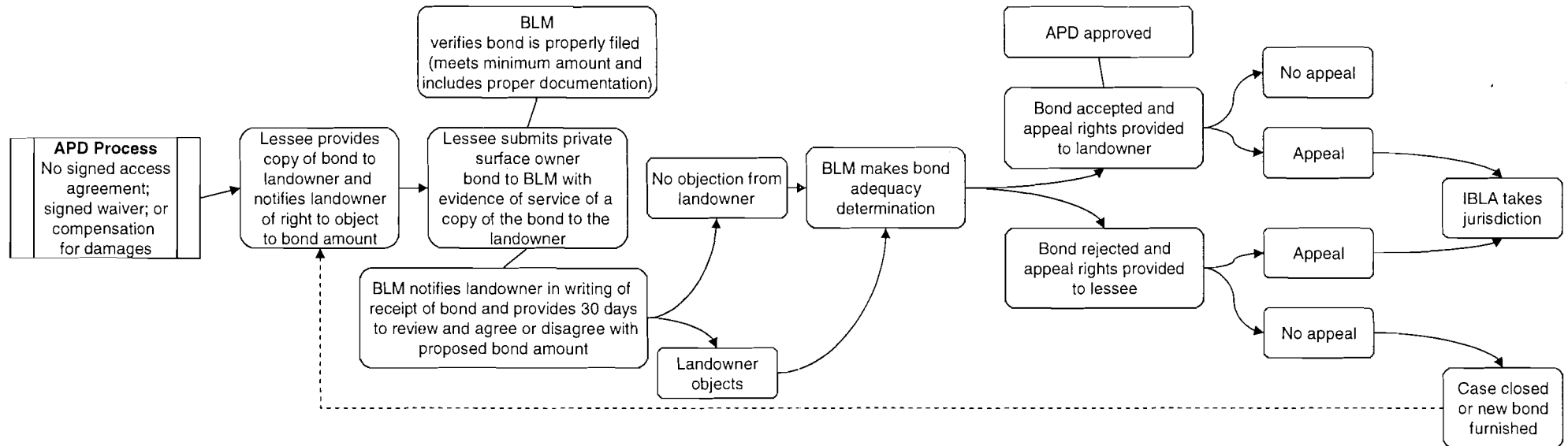
To cultivate community-based conservation, citizen-centered stewardship, and partnership through consultation, cooperation, and communication.

To respect, value, and support our employees, giving them resources and opportunities to succeed.

To pursue excellence in business practices, improve accountability to our stakeholders, and deliver better service to our customers.

BLM/WO/GI-06/022+3161

# Private Surface Owner Bond Process





Appendix P Re impoundment pit bonds.txt

From: James\_Albano@blm.gov  
Sent: Friday, January 06, 2006 10:27 AM  
To: Kolman, Joe  
Cc: David\_Breisch@blm.gov  
Subject: Re: impoundment pit bonds

Happy New Year Joe!

The Buffalo Wyoming BLM Policy in the letter form sent to operators in September is attached.

(See attached file: Bonding Policy\_Buffalo\_WY\_BLM\_091605.doc)

There is no such agreement in Montana at this time. To date compared to the thousands of on-channel reservoirs and off-channel pits Montana has a very small number. The attached document summarizes the reservoirs and pits. Except for the last row in this document which represents the initial production area, no on-channel reservoirs have been approved for these purposes.

(See attached file: Montana Approved Impoundments for the Management of CBNG Produced Water.doc)

Joe, can you give me an idea of what to expect at the subcommittee meeting in Helena on January 26?

Jim Albano  
Minerals Resource Specialist  
Reservoir Management & Operations Section  
Montana State Office  
(406) 896-5111

"Kolman, Joe"  
<jkolman@mt.gov>

01/03/2006 03:40  
PM

"James\_Albano \ (E-mail \)"  
<James\_Albano@blm.gov>

To

cc

Subject

impoundment pit bonds

Jim,

Appendix P Re impoundment pit bonds.txt

Hope this finds you still in the holiday spirit.

I was reviewing some materials and came across some information regarding the BLM/Wyoming agreement on bonding for CBM impoundment pits.

Is there anything happening on that front in Montana?

Joe Kolman  
Research Analyst  
Legislative Environmental Policy Office  
Legislative Services Division  
406-444-9280  
jkolman@mt.gov

Montana Approved Impoundments for the Management of CBNG Produced Water

Number	Location	Surface Ownership	Mineral Ownership	Status
34-3490 (native soil, compacted clay liners)	T.9S. R.40E. Section 34	Private	Federal and Private	Approved by MBOGC and BLM (Badger Hills) ( <b>will not be constructed*</b> )
44-3490 (native soil, compacted clay liners)	T.9S.R.40E. Section 34	Private	Federal and Private	Approved by MBOGC and BLM (Badger Hills) ( <b>not constructed yet</b> )
22-3590 (native soil, compacted clay liners)	T.9S.R.40E. Section 35	Private	Federal	Approved by MBOGC and BLM (Badger Hills) ( <b>probably will not be constructed*</b> )
33-3390 (native soil, clay)	T.9S.R.40E. Section 33	Private	Private	Approved by MBOGC Existing (does not receive water from Federal wells)
23-0299 (native soil, clay)	T.9S.R.39E. Section 2	Private	Private	Approved by MBOGC and BLM (Dry Creek EA and Coal Creek EA) Existing (receives water from Federal wells)
Constructed Pit for Storage at Water Treatment Site (20 mil polyethylene liner)	T.8S.R.41E. Section 7	Private	Private	Approved by MBOGC and for use by BLM in Powder River Gas Coal Creek EA Completed
Various (off-channel, on-channel) stock water ponds	T.9S., R.39E. T.9S., R.40E.	Private	Private	Approved by MBOGC Existing (do not receive water from Federal wells)

**\* Better impoundment sites have been identified and exiting water management options provide sufficient capacity at this time.**



Dear Operator,

The Bureau of Land Management (BLM) has been working with the State of Wyoming to develop a process which will cooperatively cover reclamation issues, avoid duplication and insure maximum consistency associated with the construction and bonding of water impoundment facilities that receive produced water from coal bed natural gas (CBNG) wells. The BLM-Buffalo Field Office (BFO) entered into an agreement with the State of Wyoming on October 24, 2002 to address off channel pits. Under that agreement, the Wyoming Oil and Gas Conservation Commission (WOGCC) has bonded off-channel pits located over private and state minerals and BLM agreed to bond pits over federal minerals.

The BLM is currently requiring bonds for water impoundment facilities on federal surface permitted subject to Right of Way (ROW) authority (43 CFR, 2800). The BFO has now developed the processes and criteria for bonding those facilities located over federal minerals that are permitted subject to Oil & Gas authority (43 CFR, 3100). This letter provides CBNG operators the basic requirements and timeframes for this office's water impoundment bonding program subject to both the oil & gas and ROW authorities.

## **I. General Requirements**

- The BLM will require bonds or bond riders for on-channel reservoirs and off-channel pits that receive or will receive produced water from Federal CBNG wells related to a federally approved action over federal minerals. Refer to Attachment #1.
- Bond amounts will be determined by a professional engineer's estimate of total reclamation costs
- Bond adequacy will be reviewed by BLM every 5 years and bond adjustments will be required following proper notification and documentation
- No duplicate bonding from both BLM and agencies of the State of Wyoming will be imposed on any water impoundment

## **II. Implementation Timeframes & Processes**

These provisions became effective on September 1, 2005.

### **Oil & Gas Operations**

#### Plans of Development/APD's approved prior to July, 2003 and No Condition of Approval for Future Bonding was included in the Approval

- BLM will not require a retroactive bond for water impoundments

#### Plans of Development/APD's approved since July, 2003 and a Condition of Approval for Future Bonding was included in the Approval

- BFO will inventory all PODs approved since August, 2003 and send a separate letter notifying operators of the required bond amount(s) and notice that they will have 90 days to post the bond(s) or bond rider. Where a professional engineer's estimate of reclamation cost was not included in the original POD submission, the operator will be required to submit this information
- BFO will identify any oversights in POD approvals where a Condition of Approval was inadvertently not attached to the POD approval, amend that approval, and notify the operator by separate letter of the bond amount(s) and that they will have 90 days to post the bond(s) or bond rider

#### Plans of Development/APD's submitted prior to September 1, 2005 but not approved

- BLM will put a Condition of Approval on the approved POD/APD that operators will have 90 days from the approval date to post the bond(s) or bond rider

#### Plans of Development submitted after September 1, 2005

- Operators must post the bond(s) or bond riders prior to approval of the POD/APD
- Operators who are uncertain whether all proposed water impoundments will be constructed at the time of POD submission should prioritize their water impoundments at the time of POD submission or following the onsite field inspection. BLM will require bonding prior to approval for all "primary" water impoundments and will add a Condition of Approval to the POD that any "secondary" water impoundments must be bonded prior to construction and that a Sundry Notice be submitted to BLM prior to construction.
- The professional engineer's estimate of total reclamation cost must be submitted with the POD/APD submission. The BLM-BFO engineer will determine the adequacy of the proposed bond amount and notify BLM-Wyoming State Office, Fluid Minerals Section (WY-921) of the adequacy of the bond or bond rider with a copy to the operator
- WY-921 will provide a decision of the bond adequacy to the operator with a copy to BFO

#### Termination/adjustment of Bond(s) or Bond Riders

- All requests for bond adjustment or termination of period of liability must be submitted to BLM-Wyoming State Office, Fluid Minerals Section (WY-921). WY-921 will consult with BFO who will conduct a field inspection prior to a recommendation of bond adjustment. WY-921 will issue a decision regarding bond adjustments
- Operators may request partial bond reduction as individual water impoundments are reclaimed. BLM will consider these on a case-by-case basis, provided that the bond or bond rider has included specific impoundment names or numbers and the associated bond amount
- BLM will consider, on a case-by-case basis, requests from operators to leave water impoundments in place in lieu of reclamation on fee surface overlying federal minerals. This determination will only be considered at the time of abandonment with a signed waiver from the current fee surface owner that waives liability to the United States for all past and future activities

#### **Rights-of-Way (ROW)**

- Operators must submit a bond prior to right-of-way approval
- A separate bond must be filed for each ROW action. Similar facilities may be included in a single ROW action
- The professional engineer's estimate of total reclamation cost must be submitted with the right-of-way submission. The BLM-BFO engineer will determine the adequacy of the proposed bond amount and advise the realty staff
- All requests for bond adjustment must be submitted to BLM-Buffalo Field Office realty staff. BFO realty staff will conduct a field inspection prior to a recommendation of bond adjustment. BFO will issue a decision regarding all bond adjustments
- Operators may request partial bond reduction as individual water impoundments are reclaimed. BLM will consider these on a case-by-case basis, provided that the bond has included specific impoundment names or numbers and the associated bond amount

### **III. Bonding Authorities, Types and Requirements**

The BLM-BFO is implementing the existing authority found at 43 CFR, Part 2805 (Rights-of-Way) and 43 CFR, Part 3104 (Oil & Gas Operations) for these bonds.

The types of bonds, bond forms and information about submitting bonds are provided in Attachments #2 and #3 to this letter. Additional information is available by contacting Debra Olsen @ 307-775-6166 or Judy Oldenburg @ 307-775-6188, Land Law Examiners at the BLM-Wyoming State Office.

The applicability of BLM's water impoundment bonding requirements is associated with determining whether there is a Federal action over Federal minerals. The chart found in Attachment #1 and the scenarios found in Attachment #4 are provided to assist operators in determining the applicability of the federal and state bonding requirements. Additional information is available by contacting Richard Zander, Randy Nordsven or John Kolnik at the BLM-Buffalo Field Office at 307-684-1100.

Sincerely,

Chris E. Hanson  
Field Manager

Attachment(s) 4

Attachment 1

<b>Side by Side Comparison of the State of Wyoming and U.S. Bureau of Land Management Bonding Requirements for CBNG Produced Water Retention Reservoirs / Pits</b>				
<b>Scenario No</b>	<b>Surface Estate</b>	<b>Mineral Estate</b>	<b>On-Channel Reservoirs</b>	<b>Off-Channel Pits</b>
1	Private	Private	WDEQ <sup>1</sup>	WOGCC <sup>2</sup>
2	Private	State	WDEQ <sup>1</sup>	WOGCC <sup>2</sup>
3	Private	Federal	BLM <sup>3</sup>	BLM <sup>3</sup>
4	State	State	WDEQ <sup>1</sup>	WOGCC <sup>2</sup>
5	State	Federal	BLM <sup>3</sup>	BLM <sup>3</sup>
6	Federal	Federal	BLM <sup>3</sup>	BLM <sup>3</sup>
7	Federal	State or Private	BLM <sup>3</sup>	BLM <sup>3</sup> ROW in coordination w/ the WOGCC <sup>2</sup> and/or OS LI <sup>2</sup>
<sup>1</sup> Denotes WDEQ bonding requirement as follows: <ul style="list-style-type: none"> <li>• \$7,500 for reservoirs less than 5,000 cubic yards of earthwork;</li> <li>• \$12,500 for reservoirs greater than 5,000 and less than 10,000 cubic yards of earthwork;</li> <li>• For reservoirs greater than 10,000 cubic yards of earthwork, the security amount must be based upon a certified professional engineer's estimate of reclamation including costs to remove pipes, concrete and other structural components.</li> </ul>				
<sup>2</sup> Denotes WOGCC or the Office of State Lands and Investments (OSLI) bonding requirement is as follows: <ul style="list-style-type: none"> <li>• The security amount is based upon a written estimate prepared by a Wyoming registered professional engineer's estimate with expertise in surface pit remediation.</li> </ul>				
<sup>3</sup> Denotes BLM bonding requirement as follows: <ul style="list-style-type: none"> <li>• The security amount is based upon a professional engineer's estimate of reclamation costs for the facilities required as part of a POD or Right-of-Way submission.</li> </ul>				

Attachment #2  
Oil and Gas Bonds: 43 CFR, 3104

- Bonds may be posted in the form of a new bond or as a rider to an existing individual lease bond, statewide bond or nationwide bond. If a bond rider is filed, it must be of the same type (i.e. personal or surety bond) as the underlying lease, State or Nationwide bond.
- A bond must be posted to cover the facility or facilities in the full amount (even dollars rounded up to the nearest dollar) of a professional engineer's estimate
- Acceptable forms of bonds are a Surety Bond or a Personal Bond accompanied by the following: Certificate of Deposit, Cashiers Check, US Treasury Security or an Irrevocable Letter of Credit (Form 3000-4)
- A new bond or bond rider must specify each facility being bonded by name or number and bond amount
- All reservoirs, pits and treatment facilities in a single POD can be covered by one bonding action
- Bonds or bond riders must be submitted to the: Wyoming State Office-Fluid Minerals Section (WY-921); P.O. Box 1828; Cheyenne, WY 82003
- The period of liability for bonds may be released after reclamation is successfully completed as determined by the authorized officer or the surface owner agrees in writing to the BLM to accept responsibility for the facilities after the wells in the POD have been plugged

Attachment #3  
Right of Way (ROW) Bonds: 43 CFR, 2805

- A bond must be posted to cover the ROW facility or facilities in the full amount (even dollars rounded up to the nearest dollar) of a professional engineer's estimate prior to approval of the ROW
- All reservoirs, pits and treatment facilities can be covered by one ROW bonding action provided they are similar facilities and associated with a single ROW
- Bonds must specify each facility being bonded by name or number and bond amount
- Bonds will be released or adjusted after reclamation is successfully completed as determined by the authorized officer
- Acceptable forms of bond under a ROW action are cash, surety, or book entry deposit (Forms 2800-16 and 2800-17)
- Bonds must be submitted to the: Buffalo Field Office; 1425 Fort Street; Buffalo, WY 82834



Attachment #4  
Bonding Scenarios

These examples are provided to assist operators in determining the type of bond that will be applicable (See also, Attachment #1)

1. Federal minerals/federal surface are being developed and produced water will go to a facility on the federal lease being developed. **3104 bond**
2. Federal minerals/federal surface are being developed and produced water will go to a facility on an adjacent federal lease/federal surface which is also being developed. **2805 bond (ROW required)**
3. Federal minerals/federal surface are being developed and produced water will go to a facility on an adjacent federal surface not being developed. **2805 bond (ROW required)**
4. Federal minerals/private surface are being developed and produced water will go to a facility on the federal lease being developed. **3104 bond**
5. Federal minerals/private surface are being developed and produced water will go to an adjacent federal lease being developed. **3104 bond**
6. Federal minerals/private surface are being developed and produced water will go to an adjacent private surface/federal lease not being developed. **3104 bond**
7. Private minerals being developed and produced water will go to facilities located on federal surface. **2805 bond (ROW required)**
8. Federal minerals/private surface are being developed and produced water will go to an adjacent private surface/private minerals. **Bond will be required by the State of Wyoming.**